



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

USMD HOSPITAL AT ARLINGTON, LP  
801 WEST INTERSTATE 20  
ARLINGTON TX 76017

#### **Carrier's Austin Representative Box**

17

#### **MFDR Date Received**

OCTOBER 18, 2007

#### **Respondent Name**

SECURITY NATIONAL INSURANCE CO

#### **MFDR Tracking Number**

M4-08-1128-01

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary Dated October 18, 2007:** "Claim meets the stop loss."

#### **Requestor's Supplemental Position Summary Dated September 7, 2011:**

"Review of the above referenced case shows unusually costly and extensive services were provided as evidenced by:

#### **H & P:**

43 yr old male – Status post shoulder surgery times two.

#### **Surgical Procedures:**

1. C5 corpectomy, resection of thickened posterior longitudinal ligament, resection of opacification of the posterior longitudinal ligament, resection of C4-5 and C5-6 disc protrusions, spinal cord and nerve root decompression, and decompression of the left and right C5 and the left C6 nerve roots.
2. Partial C6 corpectomy with spinal cord and nerve root decompression, resection of spurs, resection of thickened posterior longitudinal ligament and bilateral C6-7 foraminotomies.
3. Partial C4 corpectomy with spinal cord and nerve root decompression, resection of spurs, resection of thickened posterior longitudinal ligament and exploration of the epidural space.
4. Partial C3 corpectomy with spinal cord and nerve root decompression, resection of spurs, resection of thickened posterior longitudinal ligament and exploration of the epidural space.
5. Anterior Cervical fusion C3-4 with autogenous bone marrow, matrix putty and infuse.
6. Anterior Cervical fusion C4-5 with auto graft bone, autogenous bone marrow, matrix putty and infuse.
7. Anterior Cervical fusion C5-6 with auto graft bone, autogenous bone marrow, matrix putty and infuse.
8. Placement of Danek Cornerstone Peek Interbody Fusion cage C3-4.
9. Placement of Danek Cornerstone Peek Interbody Fusion cage strut graft C4-C6.
10. Anterior Instrumentation of the cervical spine C3 through C6 with a Theken Tether Plate and screws. A 3 level plate was used with 15mmx4mm screws. Plated measured 52mm.
11. Bone marrow aspirate left iliac crest.
12. Fluoroscopic localization and guidance.

13. Intraoperative Neurophysiologic monitoring by Dr. Nosnik.

Total cost of Implants: \$55,767.60

Post-operative Course:

Pt. did well with resolution of pre-op symptoms.”

**Amount in Dispute:** \$17,481.47

***RESPONDENT’S POSITION SUMMARY***

**Respondent’s Supplemental Position Summary Dated September 13, 2011:** “Respondent submits this Respondent’s Post-Appeal Supplemental Response as a response to and incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV...Based upon Respondent’s initial and all supplemental responses, and in accordance with the Division’s obligation to adjudicate the payment, in accordance with the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded in accordance with the general *per diem* payment in accordance with 28 Texas Administrative Code §134.401 (repealed)...”

**Response Submitted by:** Flahive, Ogden & Latson, 505 West 12<sup>th</sup> Street, Austin, Texas 78701

***SUMMARY OF FINDINGS***

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
June 12, 2007 through June 15, 2007	Inpatient Hospital Services	\$17,481.47	\$0.00

***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers’ Compensation.

**Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

**Explanation of Benefits**

- 855-002-Recommended allowance is in accordance with workers compensation medical fee schedule guidelines.
- 920-002-In response to a provider inquiry, we have re-analyzed this bill and arrived at the same recommended allowance.
- W1-Workers compensation state fee schedule adjustment.
- W4-No additional reimbursement allowed after review of appeal/reconsideration.

**Issues**

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

## **Findings**

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$90,195.90. The Division concludes that the total audited charges exceed \$40,000.
2. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals' November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services” and further states that “...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor in its original position statement states that “Claim meets the stop loss.” This statement does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. In its supplemental position statement, the requestor asserts that: “Review of the above referenced case shows unusually costly and extensive services were provided as evidenced by: H & P... Surgical Procedures...Post-operative Course.” The requestor's supplemental position fails to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive in relation to similar spinal surgery services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
3. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor's original nor its supplemental position statement address how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was three days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of three days results in an allowable amount of \$3,354.00.
- 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
- A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$55,767.60.
- The Division finds the total allowable for the implants billed under revenue code 278 is:

Description of Implant per Itemized Statement	Quantity	Cost Invoice	Cost + 10%
Infuse Medium	1	\$4,600.00	\$5,060.00
Cage Cornerstone PSR 11x11x9	1	\$1,495.00	\$1,644.50
Cage Cornerstone STRUT 11x11x6	1	\$3,025.00	\$3,327.50
Cage Cornerstone 14x11x10 PSR	1	\$1,495.00	\$1,644.50
Screw 4.0x15mm Var. Angle	5	\$150.00/each	\$825.00
Cage Cornerstone PSR 11x11x10mm	1	\$1,495.00	\$1,644.50
Plate Cervical Fixation 52mm	1	\$925.00	\$1,017.50
Putty Mastergraft 6cc	1	\$685.00	\$753.50
TOTAL	12		\$15,917.00

The division concludes that the total allowable for this admission is \$19,271.00. The respondent issued payment in the amount of \$19,271.00. Based upon the documentation submitted no additional reimbursement can be recommended.

### **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

10/11/2012  
\_\_\_\_\_  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**